

(2015) 02 DEL CK 0326
In the Delhi High Court
Case No : Criminal Rev. P. 153/2006

Manoj Kumar

APPELLANT

Vs

State of NCT of Delhi

RESPONDENT

Date of Decision : 27-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 251, 313, 337
Penal Code, 1860 (IPC) — Section 279, 304-A, 337

Citation : (2015) 02 DEL CK 0326

Hon'ble Judges : P.S. Teji, J.

Bench : Single Bench

Advocate : Gaurav Sharma, for the Appellant; Pramod Saxena, APP, Advocates for the Respondent

Final Decision : Disposed off

Judgement

P.S. Teji, J.—Aggrieved by the judgment of conviction dated 06.09.2005 and order on sentence dated 08.09.2005 passed by the learned Metropolitan Magistrate, awarding the sentence to the petitioner to undergo rigorous imprisonment for a period of six months and fine of Rs.500/- under Section 279 IPC, in default of payment of fine to further undergo simple imprisonment for a period of six days; sentence to undergo rigorous imprisonment for a period of six months and fine of Rs.500/- under Section 337 IPC, in default to further undergo simple imprisonment for a period of six days; sentence to undergo rigorous imprisonment for a period of one year and fine of Rs.1,000/- under Section 304-A IPC, in default to further undergo simple imprisonment for a period of twelve days and upholding the same by the learned Additional Sessions Judge vide judgment dated 20.02.2006, the present revision petition has been filed by the petitioner.

2. Factual matrix, as emerges from the record, is that on the fateful day of 23.04.1994 at about 05.00 p.m., an accident had taken place at Barafkhana Chowk. The vehicle involved in the accident was a Bus bearing registration No.DL

1P 4357. In the accident, one Smt. Kamini Sharma sustained simple injuries and one Madhu Sudan Upadhyaya died. The case of the prosecution was that at the time of accident, the petitioner was deputed as driver of the bus and was driving the bus rashly and negligently which resulted into accident and snatched a life apart from causing injuries to Smt. Kamini Sharma. An FIR of the case was recorded. On completion of investigation, charge-sheet was filed.

3. Notice under Section 251 Cr.P.C. was served upon the petitioner for commission of offence punishable under Section 279, 337 and 304-A IPC. The petitioner pleaded not guilty to the notice served.

4. To prove its case, the prosecution examined 12 witnesses. After conclusion of prosecution evidence, the statement of the petitioner was recorded under Section 313 Cr.P.C. in which he had claimed innocence. The petitioner did not opt to lead any evidence in his defence. The learned Metropolitan Magistrate vide judgment dated 06.09.2005 held the petitioner guilty for the offence punishable under Section 279, 337 and 304-A IPC and convicted him for the said offences. The order on sentence was passed on 08.09.2005.

5. Thereafter, the petitioner filed an appeal bearing Criminal Appeal No.39/2005. The learned Additional Sessions Judge vide judgment dated 20.02.2006, confirmed the conviction of the petitioner as well as sentence of imprisonment awarded to him.

6. Feeling aggrieved by the same, the petitioner has preferred the present revision petition to set aside the judgments rendered by the Courts below and claiming acquittal.

7. It has been argued by the learned counsel for the petitioner that PW4 Kamini Sharma had not seen the offending vehicle. He further submits that no skid marks of the tyres of the bus were shown in the site plan and even site plan was not prepared at the instance of PW4. It is further submitted that PW4 had not seen the petitioner driving the bus and she saw the petitioner only after the incident on his apprehension by the public.

8. There is no basis in this contention of the learned counsel for the petitioner inasmuch as injured/eye witness Kamini Sharma (PW4) had specifically stated that on 23.04.1994 when she along with her cousin Madhusun was going for shopping on a two wheeler scooter and reached at the red light at about 05.00 p.m., one bus No.DL 1P 4357 came in a very high speed and struck against their scooter, due to which they fell down. She sustained injury and his cousin brother sustained multiple injuries on his head. She identified the accused and stated that the said bus was driven by accused. Her cousin was removed to HRH Hospital. She categorically stated that the accident had taken place due to rash and negligent driving of the accused. In the hospital, her cousin brother expired.

9. There is enough evidence against the petitioner in the form of testimony of the eye witness Kamini Sharma (PW4) that the bus driven by the petitioner hit

the scooter on which she along with deceased was riding. She identified the petitioner as driver of the offending bus and categorically stated the petitioner drove the bus in very high speed, rash and negligently and caused the accident. There are minor contradictions in the statement of this witness during her cross-examination, but the same are not such which could go to the root of the matter of affect the credibility of this witness. The petitioner has not even disputed the presence of this witness at the spot at the time of incident but claimed that he was not rash and negligent. There is no reason to disbelieve the testimony of injured eye witness (PW4) which established the rash and negligent driving of the petitioner causing the death of her cousin.

10. PW2 Vijay Chopra, owner of the offending bus bearing No.DL 1P 4357 further corroborated the prosecution case that he was owner of the bus and the bus was the case property and the same was got released on superdari.

11. Further argument advanced by the learned counsel for the petitioner is that the Courts below committed error while delivering the judgment and holding the petitioner guilty and convicting him under Section 337 Cr.P.C. which is not sustainable in the eyes of law as neither the injuries suffered by PW4 nor MLC Ex.PW6/A was put to the petitioner during examination under Section 313 Cr.P.C. and referred to reported judgments in case of Savita alias Babbal Vs. State of Delhi, ; Trilok Chand Bansal vs. The State 2010 [1] JCC 394 and Dinesh Kumar vs. State 2010 [3] JCC 2147.

12. In Savita's case (supra) , it was observed that when certain material questions in respect of material documents are not put to the accused during his examination under Section 313 Cr.P.C., such documents could not be relied upon by the Court against the accused.

13. In Trilok Chand Bansal's case (supra) , it was observed that recording of statement under Section 313 Cr.P.C. to put up all incriminating evidence to the accused is a very important right given to the accused so as to make him understand as to what is the case of the prosecution against him. This also gives opportunity to the accused either to admit the allegations or to refute them and, if necessary, to lead even defence evidence.

14. In Dinesh Kumar's case (supra) it was observed that it is the duty of the Trial Judge to question the accused properly and fairly, bringing home to the mind of the accused, in simple and clear language, the exact case he has to meet on each material point that is sought to be made against him and of affording him a chance to explain it if he can and so desires. It is imperative on the Court to give opportunity to an accused to explain every incriminating circumstance proved by the prosecution.

15. The perusal of statement under Section 313 Cr.P.C. of the accused shows that the injuries suffered by PW4 and the MLC Ex.PW6/A of the injured Kamini Sharma was not put to the petitioner nor the instance of causing injuries to the injured by the petitioner were put to the petitioner. In the absence of putting the

MLC Ex.PW6/A and the instance of causing injuries to the injured, in the statement under Section 313 Cr.P.C. of the petitioner, there was no opportunity with the petitioner to furnish explanation of the said incriminating evidence. The same cannot be used against him and have to be excluded from consideration.

16. In view of law laid down in case of Savita Alias Babbal (supra) , Trilok Chand Bansal (supra) , Dinesh Kumar (supra) and in view of above discussion, this Court is of the view that conviction of the petitioner for offence under Section 337 IPC is liable to be set aside as neither the MLC Ex.PW6/A of the injured nor the instance of causing injuries to the injured were put to petitioner during his examination under Section 313 Cr.P.C. and the same cannot be read against him. Consequently, the conviction of the petitioner under Section 337 IPC is set aside.

17. The learned counsel for the petitioner has submitted that the incident of the present case had taken place on 23.04.1994. The charge sheet was filed on 19.10.1994. The judgment of conviction was passed by learned MM on 06.09.2005 and order on sentence was passed on 08.09.2005. The learned Additional Sessions Judge passed the judgment on 20.02.2006 and presently we are in the year 2015. He further submitted that the petitioner is the sole bread earner of the family and entire family is dependent upon him. He has suffered the agony of the proceedings for about 20 years and prayed for taking a lenient view on the quantum of sentence.

18. In view of discussion made above, the conviction of the petitioner under Section 337 IPC is set aside, whereas the conviction under Section 279 and 304-A IPC is upheld.

19. This Court is of the considered opinion that it would not serve any purpose to send the petitioner behind the bar. So, the sentence of imprisonment is modified to the period already undergone by the petitioner. However, the fine is enhanced from Rs.1000/- to Rs.25,000/- for offence under Section 304-A IPC, in default of payment of fine, the petitioner shall undergo simple imprisonment for six months, subject to adjustment of fine already paid.

Fine if so realised, be paid to the family members of deceased.

20. The petitioner shall appear before the Chief Metropolitan Magistrate (North) within the period of one month from the date of order to pay the remaining fine, failing to which surrender to serve the sentence in default of payment of fine.

21. The present revision petition is disposed of accordingly. File of the trial court be sent back.